

Questions & Answers

Constitutional Law

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THIRD EDITION

*Multiple Choice and Short Answer
Questions and Answers*

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To Patrick—You'll always be a part of me

P.E.M.

To Madelyn—For all that she is and all that she will become

To Joan—My touchstone

L.S.E.

To David “the Godfather” Guinn—My inspiration

To Marcie and Mason—My life's greatest treasures

R.R.

Contents

About the Authors	xiii
Preface	xv
Questions	1
Topic 1: Justiciability: Judicial Review	3
Topic 2: Justiciability: Standing	5
Topic 3: Justiciability: Mootness	9
Topic 4: Justiciability: Ripeness	11
Topic 5: Justiciability: Political Question	13
Topic 6: Justiciability: Generally	15
Topic 7: Separation of Powers: General Principles	19
Topic 8: Separation of Powers: Nondelegation Doctrine	21
Topic 9: Separation of Powers: Legislative Power	23
Topic 10: Separation of Powers: Executive Power Generally	25
Topic 11: Separation of Powers: The Appointment Power	27
Topic 12: Separation of Powers: The Removal Power	29
Topic 13: Separation of Powers: Executive Privilege	31
Topic 14: Separation of Powers: Presidential Immunity	33
Topic 15: Separation of Powers: Executive Power over Foreign Policy	35
Topic 16: Separation of Powers: War Powers	37
Topic 17: Separation of Powers: Presidential Impeachment	39
Topic 18: Congressional Power: Commerce Clause	41
Topic 19: Congressional Power: Spending Clause	45
Topic 20: Congressional Power: Enforcing the Fourteenth Amendment	47
Topic 21: Congressional Power: Treaty Power	49

Topic 22: Congressional Power: War Power	51
Topic 23: Congressional Power: Taxing Power	53
Topic 24: Federalism: Limits on Federal Power	55
Topic 25: Federalism: Dormant Commerce Clause	61
Topic 26: Federalism: Article IV Privileges and Immunities Clause	65
Topic 27: Federalism: Preemption	67
Topic 28: Federalism: Intergovernmental Tax Immunity	69
Topic 29: Federalism: General Limits on State Power	71
Topic 30: State Action: General Principles	73
Topic 31: State Action: Public Function Rule	75
Topic 32: State Action: Significant State Involvement	77
Topic 33: Substantive Due Process: Fundamental Rights	79
Topic 34: Substantive Due Process: Incorporation Doctrine	81
Topic 35: Substantive Due Process: Economic Rights	83
Topic 36: Substantive Due Process: Non-Economic Rights	85
Topic 37: Takings Clause	91
Topic 38: Contract Clause	97
Topic 39: Procedural Due Process: Defining a Property Interest	99
Topic 40: Procedural Due Process: What Process Is Due?	101
Topic 41: Procedural Due Process: Defining a Liberty Interest	103
Topic 42: Privileges or Immunities Clause of the Fourteenth Amendment	105
Topic 43: Equal Protection: Tiers of Scrutiny	107
Topic 44: Equal Protection: Rational Basis Review	109
Topic 45: Equal Protection: Gender	111
Topic 46: Equal Protection: Race	113
Topic 47: Equal Protection: Legitimacy	117
Topic 48: Equal Protection: Alienage	119
Topic 49: Equal Protection: Fundamental Rights	121
Topic 50: Equal Protection: Age	123
Topic 51: Free Speech: Speech that Provokes Violence	125
Topic 52: Free Speech: Offensive Speech	127
Topic 53: Free Speech: Hate Speech	129
Topic 54: Free Speech: Political Speech	131

Topic 55: Free Speech: Time, Place, and Manner Restrictions	133
Topic 56: Free Speech: Expressive Association	135
Topic 57: Free Speech: Commercial Speech	137
Topic 58: Religion: General Overview	139
Topic 59: Religion: Free Exercise Clause	141
Topic 60: Religion: Establishment Clause	143
Final Exam Questions	147
Part 1: Multiple Choice Questions	149
Part 2: Short Answer Questions	161
Answers	163
Topic 1: Justiciability: Judicial Review	165
Topic 2: Justiciability: Standing	169
Topic 3: Justiciability: Mootness	177
Topic 4: Justiciability: Ripeness	179
Topic 5: Justiciability: Political Question	181
Topic 6: Justiciability: Generally	185
Topic 7: Separation of Powers: General Principles	191
Topic 8: Separation of Powers: Nondelegation Doctrine	195
Topic 9: Separation of Powers: Legislative Power	197
Topic 10: Separation of Powers: Executive Power Generally	201
Topic 11: Separation of Powers: The Appointment Power	205
Topic 12: Separation of Powers: The Removal Power	207
Topic 13: Separation of Powers: Executive Privilege	211
Topic 14: Separation of Powers: Presidential Immunity	217
Topic 15: Separation of Powers: Executive Power over Foreign Policy	219
Topic 16: Separation of Powers: War Powers	223
Topic 17: Separation of Powers: Presidential Impeachment	227
Topic 18: Congressional Power: Commerce Clause	229
Topic 19: Congressional Power: Spending Clause	237
Topic 20: Congressional Power: Enforcing the Fourteenth Amendment	243
Topic 21: Congressional Power: Treaty Power	245
Topic 22: Congressional Power: War Power	247

Topic 23: Congressional Power: Taxing Power	249
Topic 24: Federalism: Limits on Federal Power	251
Topic 25: Federalism: Dormant Commerce Clause	259
Topic 26: Federalism: Article IV Privileges and Immunities Clause	265
Topic 27: Federalism: Preemption	267
Topic 28: Federalism: Intergovernmental Tax Immunity	269
Topic 29: Federalism: General Limits on State Power	271
Topic 30: State Action: General Principles	273
Topic 31: State Action: Public Function Rule	275
Topic 32: State Action: Significant State Involvement	279
Topic 33: Substantive Due Process: Fundamental Rights	283
Topic 34: Substantive Due Process: Incorporation Doctrine	287
Topic 35: Substantive Due Process: Economic Rights	289
Topic 36: Substantive Due Process: Non-Economic Rights	293
Topic 37: Takings Clause	307
Topic 38: Contract Clause	313
Topic 39: Procedural Due Process: Defining a Property Interest	317
Topic 40: Procedural Due Process: What Process Is Due?	321
Topic 41: Procedural Due Process: Defining a Liberty Interest	325
Topic 42: Privileges or Immunities Clause of the Fourteenth Amendment	327
Topic 43: Equal Protection: Levels of Scrutiny	331
Topic 44: Equal Protection: Rational Basis Review	335
Topic 45: Equal Protection: Gender	339
Topic 46: Equal Protection: Race	343
Topic 47: Equal Protection: Legitimacy	351
Topic 48: Equal Protection: Alienage	353
Topic 49: Equal Protection: Fundamental Rights	355
Topic 50: Equal Protection: Age	357
Topic 51: Free Speech: Speech that Provokes Violence	359
Topic 52: Free Speech: Offensive Speech	363
Topic 53: Free Speech: Hate Speech	367
Topic 54: Free Speech: Political Speech	369
Topic 55: Free Speech: Time, Place, and Manner Restrictions	375
Topic 56: Free Speech: Expressive Association	379

Topic 57: Free Speech: Commercial Speech	381
Topic 58: Religion: General Overview	385
Topic 59: Religion: Free Exercise Clause	387
Topic 60: Religion: Establishment Clause	393
Final Exam Answers	403
Part 1: Multiple Choice Answers	405
Part 2: Short Answers	423
Table of Cases	425
Index	431

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Preface

As we publish this third edition, the future directions of Constitutional Law are uncertain. Our first edition arrived at a time of remarkable stability—the Supreme Court’s membership had not changed for over a decade (a modern record!). Our second edition arrived shortly after the birth of the Roberts Court, which, with a few notable exceptions, generally continued along the constitutional path charted by the Rehnquist Court. But this edition hits after the passing of Justice Scalia and the political uncertainty with respect to his replacement. Depending on the views of the new justice, many of the 5-4 decisions decided over the last twenty years conceivably could be narrowed, distinguished, modified, or even overruled. With so much at stake, lively debate and uncertainty are likely to be the rule, rather than the exception.

This book is written for students taking the basic survey course in Constitutional Law. In drafting questions, we have pitched the breadth, depth, and level of difficulty to those studying the subject for the first time. This approach led to several choices regarding coverage as well as the form of the questions and answers. To help the reader better understand our approach, and thus how best to use this study tool, we offer the following observations.

First, unlike hornbooks and treatises, our coverage is not encyclopedic. We expect that our readers will take a final exam in a general survey course, and so our coverage is that of virtually every introductory Constitutional Law course. Specialized issues within each topic are hit upon lightly, and esoteric wrinkles are omitted entirely.

Second, our topic selection is further influenced by the growing tendency to shrink the coverage of the basic Constitutional Law course. With the Supreme Court’s revival of its federalism jurisprudence, and with many schools reducing their Constitutional Law survey courses from six to four hours, it has become impracticable to cram all of the structural and individual rights material into a single course. Consequently, many schools have shifted some topics from the basic survey course to upper level electives. For example, the First Amendment is increasingly covered in a separate course. Similarly, the Takings Clause is often covered in the Property survey course. For this reason, we offer only the type of broad-brush coverage of free speech, religious freedom, and takings that one might expect in the Constitutional Law survey course. More detailed coverage of those subjects appear in other volumes in the *Q&A* series.

Third, we caution the reader that this volume differs somewhat from others in the *Q&A* series. Users of other volumes will notice that our answers are longer than those in some of the other books. This is because most of the Constitutional Law questions worth asking, and thus worth your study time, cannot be answered and explained in a short space. So, while our multiple choice questions each list four (A), (B), (C), (D) one-sentence answer choices, the true answers—and the

ones we would expect to see students produce on our exams—are the explanations we supply in the second half of the volume. Further, our “short answers” are likely longer than those you will find in other volumes in the series. Again, the reason is that the types of questions that will best prepare you for a Constitutional Law exam are rarely susceptible to one-paragraph answers. In the end, we have tried to balance brevity with the need to provide the student with realistic, useful questions. Our practice has been to err on the side of usefulness, resulting in somewhat longer discussions.

While the answers to our short answer questions vary in length, none is more than three paragraphs. Unless otherwise indicated, the question can be answered in one paragraph. Do not fret if your answer comes in slightly longer or shorter than our answer. As long as the substance is the same, we would give full credit on an exam. If your answer is longer, however, our answer may show how to convey the same substance in fewer words. On time pressure exams, such brevity can be an asset.

Several of the questions in this volume do not have easy answers. When this is the case, we identify the question as a close call and then suggest which answer we believe is best. That does not mean our preferred answer is the “correct” one. Indeed, you or your professor may disagree with our chosen answer, and in a few instances we disagree between ourselves as to the better response. That said, we believe each answer discusses all of the relevant arguments, and this is what counts on our constitutional law exams. More important than merely choosing the “correct” or “best” answer is understanding *why* one answer is better than the others. If you reach this understanding and disagree with our choice, so be it.

As with all the subjects in the *Q&A* series, Constitutional Law undergoes periodic change. When those changes reach a critical mass, we will produce yet another volume. In the interim, we will make updates available on the book’s webpage at www.cap-press.com.

Last, as many of the questions are difficult and contestable, we are interested in hearing from you—our readers. We welcome any and all suggestions about alternate analyses, confusing discussions, or twists on various questions. We are grateful for the comments and questions that helped improve this edition, so please keep the feedback coming. You can reach us at the e-mail addresses listed below.

Best of luck in your studies!

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